

2. The petitioner received MA from the State of Wisconsin from at least the period of November 1, 2015, through February 29, 2016.
3. The petitioner moved to the State of Arizona in 2015. He applied for MA in Arizona on September 30, 2015, and his Arizona MA benefits commenced on September 1, 2015. Exhibit R-1.
4. The petitioner did not report to respondent that he had moved to Arizona.
5. On April 13, 2016, the respondent submitted a MA Overpayment notice to the petitioner indicating that it had determined that petitioner was overpaid Wisconsin MA benefits in the amount of \$1,410.02 during the period of November 1, 2015, to February 29, 2016. Exhibit R-3.

DISCUSSION

The department may recover any overpayment of medical assistance that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Wis. Stat. § 49.497(1).

“The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made.” Wis. Stat. § 49.497(1)(b).

A person must reside in Wisconsin to be eligible for BadgerCare Plus. *BadgerCare Plus Handbook*, § 3.1. Residence is based upon “physical presence” and “the person’s intent to maintain Wisconsin residence indefinitely.” Wis. Admin. Code § DHS 103.03(3)(b). “Physical presence” means “living in Wisconsin.” Wis. Admin. Code § DHS 103.03(3)(a)3. “Intent to reside” means that a person “intends that Wisconsin is the person's place of residence and that the person intends to maintain the residence indefinitely.” Wis. Admin. Code § DHS 103.03(3)(a)2.

The petitioner lived in Wisconsin before moving to Arizona in 2015. While in Wisconsin petitioner received BadgerCare Plus medical assistance benefits. He continued receiving those benefits after moving to Arizona because the petitioner did not report the move. From November 1, 2015, to February 29, 2016, when the benefits ended, the program paid \$1,410.02 on his behalf. The county agency now seeks to recover this amount.

The petitioner contends that he notified Arizona that he was receiving Wisconsin MA when he applied for benefits there. He does not refute the respondent’s contention that he failed to contact the respondent to report his move. He testified that he assumed that commencing MA benefits in Arizona would cancel his Wisconsin benefits. Regardless, because he was a BadgerCare Plus recipient throughout the overpayment period whether he knew it or not, Wis. Stat. § 49.497(1)(b), allows the Department to recover the overpayment from him. As an administrative law judge, I have no equitable powers that would allow me

to consider the fairness of the situation; rather, I must follow the law as it is written and uphold the agency's overpayment finding.

CONCLUSIONS OF LAW

The petitioner is responsible for an overpayment of BadgerCare Plus that occurred because he was a member of a household that received more benefits from the program than it was entitled to as a result of his failure to report that he had moved to Arizona.

THEREFORE, it is **ORDERED**

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of August, 2016

\s_____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 25, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability